PP v. HASSAN ALI ABDUL RAZAK

HIGH COURT MALAYA, SHAH ALAM
ZULKIFLI BAKAR J
[CRIMINAL APPEAL NO: 42H-31-04-2016]
23 AUGUST 2016

CRIMINAL PROCEDURE: *Sentence – Adequacy – Possession of dangerous weapon without lawful excuse – Pleading guilty – Imposition of fine sentence – Whether inadequate and improper – Whether additionally deserving custodial sentence – Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 6(1)*

The respondent, a 26-year old security guard, was sentenced by the Sessions Court to a fine of RM5,000, in default to two months' imprisonment, when he pleaded guilty to the charge of possessing a knife without any lawful excuse, an act made an offence by s. 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 ('Act'). The facts showed that on 13 April 2016, namely a day before he committed the offence under the Act, the respondent was arrested and charged for committing theft under s. 380 of the Penal Code and was sentenced to two months' imprisonment by the Magistrate's Court. It was evident that the fine sentence imposed by the Sessions Court aforesaid was imposed notwithstanding that s. 6(1) of the Act, as amended, had prescribed a sentence of "shall … be liable to imprisonment for a term of not less than five years and not more than ten years" for the offence. Upon the obtaining facts, in this appeal by the Public Prosecutor against inadequacy of the sentence imposed, a question arose as to whether it was legally appropriate for the learned Sessions Court Judge to impose a fine sentence instead of a sentence of "imprisonment for a term of not less than five years …" as prescribed by law, and in any case, whether the sentence imposed was on the facts and in the circumstances inadequate and ought to be enhanced by the High Court.

Held (allowing appeal; enhancing sentence):

(1) The use of the words "shall be liable" in the law must be distinguished from the words "shall be punished with". With the words "shall be punished" used, it gives no discretion to the court. However, the court is vested with a discretionary power to pass sentence of imprisonment not more than the maximum provided in the law when the phrase "be liable" is used, as in the present case. Such phrase carries no mandatory connotation. (paras 13 & 14)

(2) Adopting the purposive approach to the issue at hand, despite the words "shall be liable", it is still open for the court to impose an order for a bond of good behaviour or to impose any sentence based on the sentencing principles. The "not less than five years' imprisonment term" is not mandatory and the court's hands are not tied by the phrase.

A The court has a broad discretion to pass an imprisonment sentence of less than five years against the respondent upon assessing the relevant factors in the interest of justice. (paras 16, 20 & 25)

(3) Considering his job as a security guard, there was no necessity for the respondent to bring the shaft knife on his self for his working purpose. B The respondent also ought to know that the act of bringing the weapon in public place without authorisation or lawful purpose had posed a threat to public safety. Upon this ground, and the fact that he was aged 26 years at the time of committing the offence and therefore fully capable of knowing what is right and what is wrong, an imprisonment C term was suitable to be imposed on the respondent. (paras 26, 27 & 28)

(4) The fact that the respondent had been arrested and convicted for committing theft in a temple was an aggravating factor. The respondent also could not explain as to why he must bring along a weapon to his workplace. The culpable conduct was not trivial as the weapon could be D used to commit crime or injure. In the circumstances, the sentence as passed by the trial judge was manifestly inadequate and improper. Consequently, this court would affirm the fine sentence, but on top of that, would impose a further sentence of imprisonment for a term of one year with effect from the date of sentence on the respondent. (paras 34, E 36 & 39)

Case(s) referred to:
Dato' Seri Anwar Ibrahim v. PP [2002] 3 CLJ 457 FC ***(refd)***
Jayanthan v. PP [1973] 1 LNS 56 FC ***(refd)***
Liow Siow Long v. PP [1969] 1 LNS 98 HC ***(refd)***
F *Ng Chwee Puan v. Regina [1953] 1 LNS 60 HC* ***(refd)***
Peilis Sami v. PP [2014] 6 CLJ 670 CA ***(refd)***
Pepper v. Hart [1993] AC 593 ***(refd)***
PP v. Abdul Halim Abd Samat [2014] 4 CLJ 12 CA ***(refd)***
PP v. Jafa Daud [1981] 1 LNS 28 ***(refd)***
PP v. Lee Ah Sam [1949] 1 LNS 62 HC ***(refd)***
G *PP v. Loo Choon Fatt [1976] 1 LNS 102 HC* ***(refd)***
PP v. Ravindran & Ors [1992] 1 LNS 47 HC ***(refd)***
PP v. Wahab [1964] 1 LNS 150 HC ***(refd)***
R v. Wills [1975] 1 WLR 292 ***(refd)***
Tan Kay Beng v. PP [2006] 4 SLR 10 ***(refd)***
Teo Siaw Peng v. PP [1993] 3 CLJ 412 HC ***(refd)***
H *Zaidon Shariff v. PP [1996] 4 CLJ 441 HC* ***(refd)***

Legislation referred to:
Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 6(1)
Penal Code, s. 380

For the appellant - Rozana Husin; DPP; State Legal Advisor's Office, Selangor
I *For the respondent - In person*

Reported by Wan Sharif Ahmad

JUDGMENT

Zulkifli Bakar J:

Background

[1] This is an appeal by the Public Prosecutor ("appellant") against the sentence imposed by the learned Sessions Court Judge ("trial judge"). The accused ("respondent") was convicted and sentenced to a fine of RM5,000 and in default months' two of imprisonment.

[2] At the Sessions Court, the respondent was not represented by counsel. The respondent pleaded guilty to the charge as follows:

Charge:

> Bahawa kamu pada 14/4/2016 jam lebih kurang 12.45 hours di Jalan Besar Pandamaran di dalam daerah Klang di dalam negeri Selangor didapati dalam milik kamu ada senjata berbahaya iaitu sebilah pisau berukuran 30cm beserta hulu tanpa maksud yang sah. Oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 6(1) Akta Bahan-bahan Kakisan, Letupan dan Senjata Berbahaya 1958 dan boleh dihukum di bawah seksyen yang sama.

[3] The facts of the case as presented are as follows:

(a) On 14 April 2016 at approximately 12.45pm, Tuan Nurul Halimi bin Hassan and his personnels ("the police") received a call from one Tan Soon Kiat ("Tan") informing them that the respondent was restrained by Tan at Jalan Besar Pandaraman, Klang, Selangor. According to Tan's police report (P2), he identified the respondent from the CCTV footage as the person who had stolen his wife's slippers and attempted to steal gold chains from a temple at Jalan Woon Ten Pandamaran on 13 April 2016; and

(b) On arrival at the place, the police conducted a body search on the respondent and a shaft knife of 30cm ("pisau berukuran 30cm beserta hulu") was found inside a bag labelled PUMA which was in the respondent's possession;

[4] The respondent admitted to the facts and in his mitigation he stated:

> Pohon hukuman ringan. Saya baru dapat kerja pengawal jaga tangki air di Pandamaran. Saya ada ibu dan adik yang masih belajar di tingkatan 5. Saya yang tanggung mereka. Pisau itu untuk jaga keselamatan diri saya.
>
> (pg 18, Appeal Record)

[5] After considering and weighing the facts and mitigation, the learned trial judge sentenced the respondent as mentioned above. Dissatisfied, the Public Prosecutor appealed against the said sentence and hence this appeal.

A **At The Appeal In This Court**

[6] Throughout the hearing of this appeal, the respondent was not represented by counsel. The respondent had been given the opportunity to appoint counsel to represent him in this appeal. After several adjournments, the respondent decided not to engage any counsel to represent him and
B decided to represent himself in the hearing of this appeal.

[7] Before this court, the appellant prayed for the sentence handed down by the learned trial judge to be enhanced.

[8] During the appeal the appellant referred to the case of *Teo Siaw Peng*
C *v. PP* [1993] 3 CLJ 412 and therefore agreed that the sentence of "minimum five years' imprisonment" is not mandatory.

[9] This court, on its own accord, informed the appellant that the words in the amended section was "be liable to imprisonment for a term of not less than five years and not more than ten years". Thus, this court must find out
D the purpose of such amendment.

[10] For ease of reference, I laid down the previous provision of s. 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 ("the Act") and the amended s. 6(1) of the Act as follows:

E **Previous Provision**

> (1) Any person who in any public road or place carries or has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction **be liable to imprisonment for a term not exceeding two years,** and to
F whipping. (emphasis added)

Amended Provision

> (1) Any person who in any public road or place carries or has in his possession or under his control any offensive weapon
G otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction **be liable to imprisonment for a term of not less than five years and not more than ten years,** and to whipping. (emphasis added)

The amendment has only substituted the words "not exceeding two years"
H with the words "of not less than five years and not more than ten years". The amendment was in force from 2 July 2014.

[11] The learned Deputy Public Prosecutor handling this matter indicated that she wanted to do some research on the issue of whether the minimum five years' imprisonment sentence is mandatory. When this court resumed
I hearing, the learned Deputy Public Prosecutor did not render much assistance to this court, for example to make comparison with some other laws such as the offence of rape in the Penal Code and offences under the

Dangerous Drugs Act 1952 which also provide the words "not less than" in the (relevant) section of the law. Instead, the learned Deputy Public Prosecutor submitted that because the words "be liable" in the amendment, the sentence of not less than five years' imprisonment is not mandatory.

Findings Of This Court

"Be Liable" – Is Imprisonment Term Mandatory?

[12] Perusing the grounds of judgment written by the learned trial judge, I am aware of the fact that the learned trial judge had referred to *Teo Siaw Peng (supra)* as precedent which elucidates that s. 6(1) of the Act does not warrant the learned trial judge to make a mandatory imprisonment sentence against the respondent due to the words "be liable" used within the section.

[13] In my considered view, the use of the words "shall be liable" in the law must be distinguished from the words "shall be punished with". With the words "shall be punished with" used, it gives no discretion to the court. However, the court is vested with the discretionary power to pass sentence of imprisonment not more than the maximum as provided in the law when the phrase "be liable" is used. It contained no mandatory connotation; likewise in this case. The word "liable" was explained by Brown J in the case of *Ng Chwee Puan v. Regina* [1953] 1 LNS 60; [1953] MLJ 86 as follows:

> "But the word **"liable"– contains no obligatory or mandatory connotation. Sitting in this Court, with a table fan blowing directly on to me, I am "liable"– to catch a cold. But it does not follow that I shall.** (emphasis added)

[14] Since the words "be liable" is used in the said s. 6(1) of the Act, this court ruled that it is meant to allow the court with a discretion to pass sentence as it thinks fit after assessing the available evidence and particular facts of the case. In other words, imprisonment is not mandatory (*PP v. Wahab* [1964] 1 LNS 150; [1964] 1 MLJ 265; *PP v. Lee Ah Sam* [1949] 1 LNS 62; [1949] 1 MLJ 236; *Jayanthan v. PP* [1973] 1 LNS 56; [1973] 2 MLJ 68).

Specified Minimum Of Not Less Than Five Years' Imprisonment Term

[15] The next question that has arisen before this court is that, if the court decides to impose a sentence of imprisonment, must the term be not less than five years as this amended provision prescribes a specified minimum term of imprisonment.

[16] On this issue, this court has consulted the Hansard to see the background for the amendment and the purpose of the words used. It is on record in the Hansard that YB Tuan Mohamed Hanipa bin Maidin (Sepang) had suggested to the Deputy Minister YB Datuk Dr Haji Wan Junaidi Tuanku Jaafar that a specific provision be provided in the said section of the law to oust the power of the court to make any order of binding over for good

behaviour and also a review to be made for a special consideration for "plead guilty" cases (p. 86, D.R. 10 April 2014). With respect, I do not find such provision or exception in the said law. Therefore, it is still open to the court to impose an order for a bond of good behaviour and for guilty plea cases the court has a wide discretion to impose any sentence based on the sentencing principles. That makes the "not less than five years' imprisonment term" not mandatory for plead guilty cases or otherwise. In other words, the court's hands are not tied by the "minimum of not less than five years', imprisonment term". This purposive interpretation of the said law does not lead to absurdity.

[17] To further support my above finding the reply of YB Deputy Minister Datuk Dr Haji Wan Junaidi Tuanku Jaafar which I reproduce as follows:

> **Timbalan Menteri Dalam Negeri [Datuk Dr. Haji Wan Junaidi Tuanku Jaafar]:**
>
> Datuk Dr. Haji Wan Junaidi Tuanku Jaafar: Tuan Yang di-Pertua, penjelasan saya ini sahajalah. Selepas itu nanti tetapi belum lagi Tuan Yang di-Pertua. Saya hendak bagi penjelasan. Sebenarnya saya mengetahui bahawa rang undang-undang ini dibentangkan di Dewan ini, baca kali yang pertama pada 25 September 2013. Jadi, kalau kita benar-benar serius, saya bukan menuduh Yang Berhormat ya. *Serius hendak meminda ataupun mengisi perkara lain. dalam ini, berapa bulan yang kita ada boleh pinda. Akan tetapi kenapa sekarang pula hendak minta saya pinda? Jadi Tuan Yang di-Pertua, balik kepada apa yang saya sebut tadi. Tunggulah apa yang berlaku selepas ini nanti.* Kita lihat Yang Berhormat. Terima kasih.
>
> [Fasal-fasal 1 hingga 3 diperintahkan jadi sebahagian daripada Rang undang-undang]
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> [Rang undang-undang dimaklumkan kepada Majlis sekarang]
>
> [Majlis Mesyuarat bersidang semula]
>
> [Rang undang-undang dilaporkan dengan tidak ada pindaan; dibacakan kali yang ketiga dan diluluskan]" taken from D.R. 10/4/2014" (Emphasis added)

[18] Pursuant to the above, I am of the considered view that the YB Deputy Minister has agreed to allow judicial discretion to continue and in future the law can be amended to oust judicial discretion if need be. Moreover, I note the primary goal of the amendment is to reduce crime by way of deterrence to protect the community. For this purpose, it could be achieved since the term of the sentence to be imposed has been enhanced by the law in order to warn the criminal or criminals to be cautious towards the penalty that awaits if one commits the offence.

[19] Nevertheless, deterrence to the respondent it has to be, this court did consider that there is still a judicial discretion for the respondent who had pleaded guilty to the charge. I am of the view that a guilty plea should also

be considered by the court along with the prevalence of the offence before passing sentence. The guilty plea has indeed saved costs and enabled the case to be disposed of expeditiously.

[20] However, I would like to emphasise that the guilty plea – whether it is having a mitigating value or not, also depended on the fact as to whether the respondent has any previous convictions. If the respondent is a first offender, the court should give credit for a lesser sentence to be imposed (*Zaidon Shariff v. PP* [1996] 4 CLJ 441; [1996] 4 MLJ 44). This court agrees with Visu Sunnadurai J (as he then was) in the case of *PP v. Ravindran & Ors* [1992] 1 LNS 47; [1993] 1 MLJ 45 as follows:

> The general rule that an accused person who pleads guilty is entitled to a discount was applied by our Supreme Court in *Mohamed Abdullah Ang Swee Kang v. PP*. The Supreme Court adopted with approval the views expressed by Cumming-Bruce LJ in *R v. Boydvwhere* he said:
>
> > The policy of the court is that where a man does plead guilty, *which does give rise to public advantage and avoids the expense and nuisance of a trial, which may sometimes be a long one,* the court encourages pleas of guilty by knocking something off the sentence which would have been imposed if there had not been a plea of guilty.
>
> Similarly in the earlier Federal Court decision of *Sau Soo Kim v. PP* at p 137, Lee Hun Hoe CJ (Borneo) said:
>
> > *Whether a person is a hardened criminal or not, I feel that a plea of guilty should be treated as a mitigating factor. It not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many, particularly the witnesses.*
>
> The Supreme Court in *Abdullah Ang*'s case also held that a plea of guilty will entitle the accused person to a discount of between one-quarter to one-third of the sentence. Mohamad Azmi SCJ in delivering the judgment of the Supreme Court said at p 171: 'It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence.' *His Lordship also pointed out that failure on the part of a judge in not granting credit or discounts may result in the judge not exercising his discretion in sentencing judicially.*
>
> The credit or discount to be given in favour of the accused person is not on the maximum sentence imposed by law but rather on a sentence which would have been imposed on the accused if he had claimed trial and had been found guilty. Cumming-Bruce LJ in *R v. Boyd* above said: 'So one asked oneself, if there had been a plea of not guilty, and he had been convicted, what would have been the appropriate sentence?'
>
> Such a test was also adopted and applied by the Supreme Court in *Abdullah Ang*'s case. See also Stockdale & Delvin, *Sentencing, The Criminal Law Library (No 5)* (1987) para 2.23 and also 11 *Halsbury's Laws of England* (4th Ed) para 483.

A *Therefore, in applying the above principles of sentencing, the accused in the present case would be entitled to a discount or credit from a sentence which they would have obtained had they not pleaded guilty and had been convicted.*

It is therefore necessary for me to consider now what sentence would have been an appropriate sentence had they pleaded not guilty and had been convicted. (emphasis added)

B

[21] Moreover in my considered opinion, I do not think Parliament had intended to make the judges wear a straitjacket and act as robots without humanity for an accused who had expressed his remorse by pleading guilty at the first available opportunity.

C

[22] Even previous courts had expressed this view as guidance for subsequent courts, that each and every sentencing judge must still have pondered on such matter, as in the case of *R v. Wills* [1975] 1 WLR 292, where it was held:

D This case presented Judge Streeter with a difficult sentencing problem. The experience of this court is that judges differ considerably in the way they deal with this kind of case. The single judge suggested that this court might think this an appropriate occasion for giving some guidance to judges. *We will try to do so; but we wish to stress that our experience has been that these cases tend to differ widely in their facts.* Nothing we say in this judgment

E should be taken as a desire on our part to put judges into sentencing strait-jackets. (emphasis added)

[23] It is crystal clear that this court can exercise its unfettered discretion provided the sentence to be made is "according to law". In the case of *PP v. Jafa bin Daud* [1981] 1 LNS 28; [1981] 1 MLJ 315, Mohamed Azmi J (as

F he then was) expressed the correct stand for the sentencing principle:

A "sentence according to law" means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles. In assessing sentence, one of the main factors to be considered is *whether the convicted person is a first offender.* It is

G for this purpose that before passing sentence, a Magistrate is required to call for evidence or information regarding the background, antecedent and character of the accused. Where the convicted person has previous records and admits them as correct, the court must consider whether the offence or offences committed previously were of similar nature as the one with which he is presently charged. The court must then consider the

H sentences imposed in the previous convictions for similar offences to determine whether they have had any deterrent effect on him. Where he is found to be a persistent offender for a similar type of offences, then *it is in the interest of justice that a deterrent sentence should be passed and, in such a case, unless there are exceptional circumstances, the quantity, nature or value of the subject-matter of the offence with which he is currently charged can very rarely*

I *constitute a mitigating factor.* (emphasis added)

[24] To my mind, the relevant aggravating and mitigating factors, the gravity of the offence and public interest must be taken into account before the court determines the limits of the range of the imprisonment sentence to be imposed against the respondent in compliance with the sentencing principle. Raja Azlan Shah J (as he then was) said in the case of *Liow Siow Long v. PP* [1969] 1 LNS 98:

> ... It is not in doubt that the right measure of punishment for an offence is a matter in which no hard and fast rules can be laid down and it is to be determined by a consideration of a variety of circumstances. *In assessing sentence, the primary consideration is the character and magnitude of the offence, but the Court cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist in the case.* (emphasis added)

[25] For the abovementioned reasons, it is a settled position that the court has broad discretion to pass an imprisonment sentence of lesser than five years against the respondent upon assessing pivotal determinations of the relevant factors of this case in the interest of justice.

Bond Of Good Behaviour Or Imprisonment Term?

[26] I have taken note that the reasons given by the respondent was that he brought the weapon for his working purpose as a security guard. I have never heard that a security guard one was given a permission to be armed with a knife for self-protection. Instead, a security guard would have been given briefing and training for self-protection skills and armed with certain equipment supplied by the security guard company. There is no necessity for him to bring the shaft knife on his own for his working purpose.

[27] This court has also taken into account the age of the respondent who was 26 years old during the incident and was fully capable and knowing having what is right and what is wrong. And, surely the security company must have informed him when he was employed about the "do's and don'ts".

[28] It is my view that an imprisonment term is suitable to be imposed in this case because the respondent is capable of knowing and expected to know that the act of bringing the weapon in a public place without authorisation or lawful purpose has posed threats to public safety. To me, the respondent is responsible for his own action.

[29] As enunciated by the Court of Appeal in the case of *PP v. Abdul Halim Abd Samat* [2014] 4 CLJ 12; [2014] 1 LNS 121, it is justified to invoke a bond for good behaviour whenever the court has made appropriate consideration of all the relevant factors based on the nature of each individual case. It was held as follows:

A [14] In his submissions, learned counsel placed great reliance on the case of *Nor Afizal Azizan v. PP (supra)* to say that s. 294 of the CPC is punitive in effect and amounts to a form of punishment being inflicted on the offender. We find that learned counsel's reliance on the case of *Nor Afizal Azizan v. PP (supra)* is misplaced. We say this because although we cannot deny the fact that an order under s. 294 of the CPC is in fact punitive B in nature we must not lose sight of the fact that each individual case must be considered on its own merits and must be examined with a view to ascertaining whether, having regard to any of the matters mentioned in s. 294 of the CPC, binding over in all the circumstances of the case is expedient. (See *Public Prosecutor v. Lim Guan Hock, Public Prosecutor v. Boo Swee Kim* [1949] MLJ 231; and *Lim Kim Poh v. PP* [2000] 8 CLJ 328; [2000] C 3 MLJ 411). It must be recognised that no two cases are alike, and that the facts must necessarily vary from case to case. At the end of the day, each case has to be decided on its own merits. (emphasis added)

[30] In my considered judgment, the order for binding over is not necessarily to be applied to every case and it is not suitable to be invoked D against the respondent in the instant case because:

(a) The respondent had been convicted under s. 380 of the Penal Code for committing theft in a temple (Klang Magistrate's Court: MM3-83RS-132-4-16) and sentenced to two months' imprisonment from the date of arrest (13 April 2016). This offence was committed a day before the E respondent was arrested for the offence in the case in this appeal. Hence, it is reasonable to infer the purpose of the respondent bringing the weapon is not "purely innocent for self-protection" as he claimed; and

(b) The respondent informed the trial court that he was working as a F security guard to secure the water tank in the proximity where there is no danger as to render him to have a lawful means for bringing such weapon at a public place.

[31] Therefore, a bond for good behaviour, in my opinion, would be suitable to be applied to teenagers or those who do not intend to cause injury G to others, rather than to a cognitive adult who was also caught committing theft like the respondent in this case. In short, the respondent has to take the consequences of the offence he had committed until and unless there is an exceptional circumstance to prove otherwise.

Why The Amendment Being Made?

H

[32] To determine the rationale behind the amendment, this court had also referred to the Hansard in order to understand the Legislature's intention. In *Pepper v. Hart* [1993] AC 593, the court had adopted the purposive approach by looking at the extraneous material to give effect to construing the true purpose and background of the enactment or construction of the legislation. I Lord Griffiths in the *Pepper (supra)* said as follows:

> The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. *The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislature was enacted… In summary, I agree that the courts should have recourse to Hansard in the circusmtances and to the extent he proposes.* (emphasis added)

[33] Consulting the Hansard, this court recognises the existence of gangsterism activities that are inherently dangerous and increasingly characterised by violence. This amendment provided for a harsher sentence in respect of the terms of imprisonment and its purpose is to reduce or eliminate gangsterism and criminal activities in our society. Notably, the reasons given for agreeing with the amendment in the sitting are, *inter alia*, as follows:

(a) YB Dato' Haji Mohd Zaim bin Abu Hasan (Parit) said:

> Selain daripada isu jenayah senjata api yang semakin serius, jenayah samseng dalam kalangan para remaja dan pelajar adalah antara salah satu isu jenayah yang harus diberi perhatian yang khusus. Keadaan ini menjadi lebih buruk lagi apabila ada kumpulan kongsi gelap yang mengambil kesempatan untuk memperkembangkan aktiviti mereka dengan menjadikan golongan pelajar sebagai sasaran untuk dijadikan ahli mereka. Dalam proses menggerakkan aktiviti mereka, penggunaan bahan dan senjata terlarang seperti dinyatakan dalam akta ini merupakan instrument yang lazim digunakan oleh mereka. (p 46, D.R. 10/4/2014);

(b) YB Dato' Hasbullah bin Osman (Gerik) said:

> Pertama, untuk penambahbaikan untuk langkah pencegahan yang mana dilakukan oleh penjahat-penjahat atau pengganas-pengganas yang memberi kesan kepada rakyat. Saya juga melihat langkah kita hendak mengubah penalti ini ialah untuk kesedaran masyarakat bahawa membuat perkara ini, dapat hukuman yang setimpal walaupun sebelum ini kita sudah ada hukuman. Ketiga, kita lihat kuasa diberikan kepada polis, penguat kuasa undang-undang dalam hendak mensabitkan kesalahan kerana merekalah sebagai pasukan yang menjaga keselamatan negara dan memastikan keamanan dalam negara. Peristiwa-peristiwa yang berlaku yang kita lihat dalam keganasan, terlibat soal pergaduhan, menggunakan parang, ditetak di sana sini. (pg 49, D.R. 10/4/2014);

(c) YB Dr Haji Noor Azmi bin Ghazali (Bagan Serai) said:

> Jadi rakyat sekarang telah menjadi satu ketakutan bagi rakyat. Mungkin satu ketika nanti rakyat terpaksa keluar dengan memakai baju kalis peluru atau pun menyediakan alarm system yang canggih

A dan sebagainya untuk menjaga diri masing-masing. Ketakutan ini juga akan menimbulkan tekanan dalam hidup yang mana tekanan dalam hidup ini akan membawa juga kepada penyakit-penyakit kronik yang mana akan menjejaskan prestasi mereka. Keadaan begini juga akan mungkin satu hari akan menjejaskan ekonomi di negara kerana akan menjejaskan peluang untuk pelancong-
B pelancong datang kerana ketakutan dan sebagainya. Tidak cukup dengan kes membunuh dengan kejam menggunakan senjata api di tempat awam, rakyat Malaysia juga dikejutkan juga dengan beberapa insiden mengamuk di tempat awam. Antaranya seorang lelaki dan wanita dikatakan mengamuk sambil melibas pedang samurai di Kompleks B Jabatan Perdana Menteri. Terbaru kes
C amuk sehingga menikam orang awam di stesen LRT pada Oktober lalu yang meragut nyawa orang awam. (pg 53, D.R. 10/4/2014)

[34] As such, in my view, the fine imposed by the learned trial judge against the respondent was lacking of deterrent effect; especially so since criminal activities are springing up like mushrooms after the rain. It justified
D this court to interfere with the learned trial judge's order since this court considers that the sentence passed is manifestly inadequate and improper based on the circumstances of the case (*Dato' Seri Anwar Ibrahim v. PP* [2002] 3 CLJ 457; [2002] 3 MLJ 193).

E **[35]** On this account, the court is obliged to demonstrate the right message as regards the seriousness of the offence through appropriate sentence imposed on the offender. It is paramount that the punishment must reflect public abhorrence towards the crime and also deter others from committing similar crimes. The public would expect the courts to hand down sentences that are commensurate with the seriousness of the offence. The Court of
F Appeal had said in *Peilis Sami v. PP* [2014] 6 CLJ 670:

> [20] Now, on the question of deterrence, let it be said here that we take judicial notice that statutory rapes are rampant nowadays. Therefore, we consider it to be our solemn duty that by this judgment we should take the opportunity to issue a message to the public. So, we have this to say.
G The courts in considering what ought to be the appropriate sentence in cases of statutory rapes must never for a moment lose sight of the fact that they have a duty to protect young girls such as the complainant in the instant case from unscrupulous men such as the appellant, always on the prowl to take sexual advantage of female minors. *Hence, the courts must take a stern view of such offences, and in passing out sentences, the courts must give*
H *out the correct message to the public, that the courts view such offences with much detestation.* (emphasis added)

[36] I found the learned trial judge had erred in imposing the inadequate and inappropriate sentence as stated above, thus it provides a reason for this court to interfere. In the instant case, the fact as advanced by the appellant
I that the respondent had been convicted for committing theft in a temple where he was seen and arrested is an aggravating factor. Not only that, the

respondent could not give any reasonable explanation as to why he must bring the weapon where he was only working to guard the "water tank" which is not a normal target for robbery. This culpable conduct is not trivial as the weapon he brings along can be used to commit crimes and able to injure the public enabling this court to find that the fine imposed against the respondent is manifestly insufficient in the circumstances. Particularly the respondent had indeed committed the offence under s. 380 of the Penal Code other than the offence in this appeal.

[37] I agree with the proposition stated in the case of *Tan Kay Beng v. PP* [2006] 4 SLR 10 where the High Court said as follows:

> [36] *Our settled sentencing jurisprudence recognises that a timeously-effected plea of guilt merits a sentencing discount in certain situations. A guilty plea is relevant as a mitigation factor (a) when the plea of guilt is a genuine act of contrition* – see *Xia Qin Lai v. PP* [1999] 4 SLR 343 at [26] and (b) *when resources which would otherwise be expended at trial are saved* – see *Krishan Chand v. PP* [1995] 2 SLR 291 at 293[6] and Andrew Ashworth, *Sentencing and Criminal Justice* (Butterworths, 2nd edn, 1995) at p 137. The discount given may range between a quarter to a third of what would otherwise be an appropriate sentence though this is by no means either a hard and fast rule nor an entitlement – see eg, *Fu Foo Tong v. PP* [1995] 1 SLR 448 at 455[13].
>
> [37] It is pertinent to note that the value of a guilty plea is substantially attenuated when (a) the plea is tactical – see *Xia Qin Lai v. PP (supra)*; (b) there is no other choice but to plead guilty – see *Wong Kai Chuen Philip v. PP* [1990] SLR 1011; and (c) where the public interest considerations nevertheless necessitate a deterrent sentence – see *Fu Foo Tong v. PP (supra)*. (emphasis added)

[38] Be that as it may, in this case, it appears to this court that an enhanced sentence should be imposed to reflect public abhorrence for this kind of offence as intended by the Parliament. An imprisonment order is evidently justified to deter the respondent from re-offending as well as to deter others of his ilks. Notwithstanding that, in order to avoid miscarriage of justice, this court takes into account the guilty plea entered by the respondent based on individual merits. This court has then shown its mercy and hastened to exercise its discretion sparingly in order to strike a balance between public and private interests. In the case of *PP v. Loo Choon Fatt* [1976] 1 LNS 102; [1976] 2 MLJ 256, it was decided that:

> **The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused.** Lord Goddard LCJ in *Rex v. Grondkowski* [1946] 1 All ER 560 561 offered some good advice when he said:
>
> > **The judge must consider the interests of justice as well as the interests of the prisoners.** It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners. (emphasis added)

A **Conclusion – Decision At This Appeal**

[39] This appeal is hereby allowed. The conviction and sentence imposed by the learned trial judge is affirmed and, in addition to that, the respondent is sentenced to imprisonment for one year under s. 6(1) of the Act. The respondent had served the two months' imprisonment term in default of paying the fine. The additional one year's imprisonment term is to run from the date of the order of this court.

[40] However, after perusing the notice of appeal, I have to highlight that the notice of appeal filed by the appellant (Public Prosecutor) dated 1 August 2016 had wrongly stated that the appeal was dismissed by this court whereas this court had allowed the Public Prosecutor's appeal. As set out above in my judgment, I have laid down my reasons for allowing the appellant's appeal before this court as per the order dated 25 July 2016.